No. 84-1684 (3)

Office - Supreme Court, U.S.
FILED
MAY 29 1985
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ALLIED CORPORATION,
Petitioner,

v.

DISTRICT 17, DISTRICT 29, LOCAL UNION 7113, and LOCAL UNION 6023, UNITED MINE WORKERS OF AMERICA; and JOHN RAMEY and JOSEPH MCCARDLE, on Behalf of Themselves and Others Similarly Situated,

and

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Respondents.

OPPOSITION OF UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

WILLIAM F. HANRAHAN*
General Counsel
GERALD E COLE, JR.
Deputy General Counsel
MARY ANNE GIBBONS
Assistant General Counsel

UMWA Health & Retirement Funds
Office of General Counsel
2021 K Street, N.W.
Washington, D.C. 20006
(202) 452-5034

Attorneys for Respondent

*Counsel of Record

Dated: May 29, 1985

BEST AVAILABLE COPY

15 pp

QUESTION PRESENTED

In fashioning a remedy for a breach of a collective bargaining agreement, may a court extend damages beyond the expiration of the agreement?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
COUNTERSTATEMENT	1
REASONS FOR DENYING THE WRIT	7
CONCLUSION	11

TABLE OF AUTHORITIES

CASES:

Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971) 8

H.K. Porter Co. v. NLRB, 397 U.S. 99 (1970) 10

Lemon v. Kurtzman, 411 U.S. 192, 200 (1973) 10

Local 127, United Shoe Workers v. Brooks Shoe Manufacturing Co., 298 F.2d 277 (3d Cir. 1962) (*en banc*) ... 8, 9

Richardson v. Communications Workers of America, 443 F.2d 974 (8th Cir. 1971) 8, 9

Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) 4, 7, 8, 10

United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 7

STATUTE:

Labor-Management Relations Act, 1947
Section 301, 29 U.S.C. § 185 (1976) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1684

ALLIED CORPORATION,
Petitioner,

v.

DISTRICT 17, DISTRICT 29, LOCAL UNION 7113, and LOCAL UNION 6023, UNITED MINE WORKERS OF AMERICA; and JOHN RAMEY and JOSEPH MCCARDLE, on Behalf of Themselves and Others Similarly Situated,

and

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Respondents.

OPPOSITION OF UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

COUNTERSTATEMENT

Petitioner, Allied Corporation ("Allied"), engaged in coal mining operations in West Virginia from approximately 1938 until 1980 (Petitioner's Appendix C at 61a). Allied's employees were represented by the United Mine Workers of America ("UMWA"). Allied operated the mines as a signatory to various collective bargaining agreements between the UMWA and the Bituminous Coal Operators' Association, Inc. ("BCOA"), known as National Bituminous Coal Wage Agreements ("Wage Agreements"). (Petitioner's Appendix A at 5a.)

In 1980, Allied transferred two coal mines to two other coal companies, Armco and Shannon Pocahontas. At the time of the transfer, Allied was signatory to the 1978 Wage Agreement. (Petitioner's Appendix A at 5a-7a.) Article I of the 1978 Wage Agreement provides as follows:

> In consideration of the Union's execution of this Agreement, each Employer promises that its operations covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement [Petitioner's Appendix A at 11a].

One of Allied's obligations as a signatory to the 1978 Wage Agreement was to provide health and other non-pension benefits to pensioners receiving pensions under the UMWA 1974 Pension Plan and Trust ("1974 Pension Plan") who last worked in covered employment for Allied. That obligation was set forth in Article XX of the 1978 Wage Agreement as follows:

> [E]ach signatory Employer shall establish an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners under the 1974 Pension Plan and Trust, whose last classified employment was with such Employer. The benefits provided pursuant to such plans shall be guaranteed during the term of this Agreement by each Employer at levels set forth in such plans.

The term of the 1978 Wage Agreement was from March 27, 1978, through March 26, 1981. (Petitioner's Appendix A at 10a-11a.)

Despite the requirement in Article I of the 1978 Wage Agreement not to sell or transfer its coal mines without securing the agreement of its successors to assume its obligations under the Agreement, Allied transferred its coal mines to Armco and Shannon Pocahontas without securing their agreement to provide health benefits for Allied's 1974 Pension Plan pensioners. Instead, Allied informed the pensioners that it would continue to provide their health benefits. (Petitioner's Appendix A at 6a-7a; Petitioner's Appendix B at 37a; Petitioner's Appendix C at 62a-63a.) Although Allied did not become

signatory to the 1981 Wage Agreement, it continued to provide the pensioners' health benefits after the expiration of the 1978 Wage Agreement on March 26, 1978. In August 1982, however, Allied informed the pensioners that it would no longer provide their health benefits and that they should seek these benefits from the Respondent, the UMWA 1974 Benefit Plan and Trust ("1974 Benefit Trust"). (Petitioner's Appendix A at 6a-7a.)

The 1974 Benefit Trust was responsible, under the terms of the 1978 and 1981 Wage Agreements, for providing benefits to 1974 Pension Plan pensioners only if their last signatory employer (including the successors and assigns of that employer) was no longer in business (Petitioner's Appendix A at 8a). Because Allied's successors, Armco and Shannon Pocahontas, were still in business, the 1974 Benefit Trust disclaimed responsibility for Allied's pensioners (Petitioner's Appendix A at 7a). An action by the UMWA against, *inter alia*, the 1974 Benefit Trust and Allied to provide benefits to Allied's 1974 Pension Plan pensioners followed (Petitioner's Appendix C at 53a-56a).

The district court found that Allied breached Article I of the 1978 Wage Agreement by failing to secure the agreement of Armco and Shannon Pocahontas, its successors, to assume Allied's obligation to provide health and other non-pension benefits for Allied's 1974 Pension Plan pensioners. Consequently, the district court ordered Allied to continue to provide the pensioners' coverage unless and until it renegotiated its transfer agreements with Armco and Shannon Pocahontas to require them to provide that coverage. (Petitioner's Appendix C at 66a, 68a.)

A divided panel of the Fourth Circuit reversed the decision of the district court. The panel majority did not dispute the district court's conclusion that Allied had breached Article I of the 1978 Wage Agreement. The majority disagreed, however, with the district court's remedy. In the panel majority's view, Article XX of the Wage Agreement provided for benefits only for the life of the Agreement. The panel majority concluded, therefore, that the parties to the 1978 Wage Agreement could only reasonably have foreseen that damages would extend for the term of the Agreement. Thus, the majority decided that it was inappropriate to require Allied to provide benefits beyond the term of the Agreement. Instead, the majority found the

1974 Benefit Trust to be liable for providing the benefits at issue here. (Petitioner's Appendix B at 25a-26a.)

The case was reheard *en banc* in October 1984. In a 5-4 decision, the full Court affirmed the judgment of the district court. As in the earlier decisions, the Court found that Allied had breached Article I of the 1978 Wage Agreement by failing to require its successors to assume its obligation under the Agreement to provide health benefits to its pensioners. However, unlike the majority of the panel, the *en banc* Court found that the district court did not err in requiring Allied to provide coverage to its pensioners beyond the term of the 1978 Wage Agreement. (Petitioner's Appendix A at 11a-12a.) In doing so, the Court found that "[t]he remedy fashioned by the district court here follows the dictates of [*Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957)]" (Petitioner's Appendix A at 19a).

Relying on this Court's decisions in *Lincoln Mills* and its progeny, the *en banc* Court recognized that in fashioning a remedy for a breach of a collective bargaining agreement, it is necessary to take into consideration "other related collective bargaining agreements, as well as the practice, usage and custom pertaining to all such agreements" (Petitioner's Appendix A at 14a). In this connection, the Court reviewed not only the language of the 1978 Wage Agreement, but also the industry practice, usage and custom of providing health benefits to retired coal miners under prior Agreements. The Court noted that the UMWA and BCOA have operated for many years under collective bargaining agreements, such as the 1978 Wage Agreement, that have provided health benefits to retired miners. The Court noted further that Allied had been a party to several of these Agreements. (Petitioner's Appendix A at 5a.)

Based on this history, the Court found that when Allied breached Article I, "the consequences of its breach were easily foreseeable." The Court stated that "[i]f Allied had not breached the 1978 contract, the complaining retirees very probably would have been covered by Armco and Shannon Pocahontas until the expiration of the 1984 contract and thereafter as long as these corporations or their successors were in the business of mining coal and employing union coal miners."

As it was foreseeable that the consequences of Allied's breach would extend beyond the term of the 1978 Wage Agreement, the Court agreed that the district court's remedy was appropriate. The Court modified that remedy, however, as follows: "the damage consequential to Allied's breach can flow only as long as there is a successor coal mine employer in its chain of transfer.... Should ... circumstances change ... Allied may apply to the district court for modification or dissolution of the injunction."[1] (Petitioner's Appendix A at 18a-20a.)

[1]Consistent therewith, the Court found that the 1974 Benefit Plan's decision to deny coverage to Allied's pensioners was not arbitrary or capricious.

REASONS FOR DENYING THE WRIT

I

THE DECISION DOES NOT CONFLICT WITH DECISIONS OF THIS COURT AND DOES NOT RAISE AN IMPORTANT OR UNRESOLVED QUESTION OF FEDERAL LAW WHICH SHOULD BE ADDRESSED BY THIS COURT.

Petitioner argues that the Fourth Circuit rewrote Article XX of the 1978 Wage Agreement in violation of federal labor law by extending the pensioners' benefits beyond the life of the Agreement. In making that argument, Petitioner misreads the decision of the Court. The Court did not rewrite Article XX of the 1978 Wage Agreement. Indeed, the Court specifically acknowledged that Allied's obligations to provide health benefits under Article XX "existed only for the life of the 1978 contract" (Petitioner's Appendix A at 10a-11a). The Court concluded, however, that "[t]he agreement ... anticipated that operators might withdraw from the coal business and, by Article I, obligated the seller of a coal mine to require the purchaser to assume the seller's obligations under the agreement" (Petitioner's Appendix A at 11a). Petitioner failed to do so. Therefore, the Court found that "Allied breached Article I of the agreement when it agreed with Armco and Shannon Pocahontas that the latter, as successors, would not assume Allied's obligations under the 1978 agreement." (Petitioner's Appendix A at 11a-12a.) The Court decided that, as a result of that breach, Allied was responsible for its pensioners' health benefits beyond the term of the 1978 Wage Agreement (Petitioner's Appendix A at 19a-20a). In doing so, the Court was not, as Petitioner argues, rewriting Article XX of the 1978 Wage Agreement. The Court was merely following the well established law of this Court, as well as circuit courts around the country, that damages may extend for a reasonably foreseeable period, even if the period exceeds the term of a collective bargaining agreement. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *Textile Workers Union v.*

Lincoln Mills, 353 U.S. 448 (1957); *Richardson v. Communications Workers of America*, 443 F.2d 974 (8th Cir. 1971); *Local 127, United Shoe Workers v. Brooks Shoe Manufacturing Co.*, 298 F.2d 277 (3d Cir. 1962) (*en banc*).

Petitioner argues that it was not reasonably foreseeable that Allied's pensioners would have been covered beyond the life of the 1978 Wage Agreement because the UMWA could not insist upon such coverage under the teachings of *Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). Respondent agrees that the UMWA could not have insisted upon coverage of Allied's pensioners beyond the life of the collective bargaining agreement under *Pittsburgh Plate Glass* (employer's duty to bargain under the NLRA does not extend to persons who have already retired). Nevertheless, Respondent submits that the Court did not err in holding that the remedy for Allied's breach of its collective bargaining agreement was to require it to provide health benefits to its pensioners beyond the term of the agreement.

In so holding, the Court followed this Court's guidance in *Lincoln Mills*. Here, as in *Lincoln Mills*, the Court examined the history of bargaining between the UMWA and the BCOA, and the longstanding industry practice of providing health benefits to retired coal miners. The Court noted in this respect that:

> [t]he UMWA and many American coal mine owners have operated for many years under a master collective bargaining agreement such as the one involved in this dispute.... These collective bargaining agreements, for many years prior to 1974, have contained provisions for payment of benefits to active and retired miners.... The bargaining parties ... resolved ... in 1978 ... that the last signatory employer, or its successor, of a retired miner would provide the benefits to the retiree. [Petitioner's Appendix A at 5a.]

Significantly, the Court also noted that Allied, Armco and Shannon Pocahontas "have been parties to several of these contracts" (Petitioner's Appendix A at 5a).

Based on a review of this history, the Court concluded that:

> [i]f Allied had not breached the 1978 contract, the complaining retirees very probably would have been covered by Armco and Shannon Pocahontas until the expiration of the 1984 contract and thereafter as long as those corporations or their successors were in the business of mining coal and employing union coal miners ... Allied's breach occurred in 1980.... Viewing [Allied's] breach at that time, the consequences of the breach were easily foreseeable.
>
> ...
>
> Loss of benefits to the retired miners by Allied's actions was more certain than the loss of dues in *United Shoe* and the loss of earnings in *Richardson*. We must assume that Allied knew ... that its actions would leave the retirees without coverage and with no responsible employer against whom the UMWA could make contract demands at the next round of bargaining.... [Petitioner's Appendix A at 18a-19a.]

As the Eighth Circuit held in *Richardson v. Communications Workers of America*, 443 F.2d 974 (8th Cir. 1971), it is entirely appropriate to extend damages beyond the expiration of a collective bargaining agreement where there is a longstanding relationship between the union and the employing industry, the industry is well established and it is likely that the collective bargaining agreement will be renewed. *Id.* at 978-80. This is especially true where, as here, "[t]here is no basis in the record for concluding that repeated contracts would not have been successfully negotiated...." *Local 127, United Shoe Workers v. Brooks Shoe Manufacturing Co., supra*, 298 F.2d at 277. Indeed, as the *en banc* majority recognized, "the expected happened: both Armco and Shannon Pocahontas became signatories to the 1981 ... contract and thereby agreed to provide for retirees for whom they were responsible substantially the same health benefits as those agreed to in the 1978 contract" (Petitioner's Appendix A at 18a).

In the face of these facts, the Court concluded that the remedy for Allied's breach of contract was to require Allied to provide health benefits to its pensioners beyond the expiration of the 1978 Wage Agreement (Petitioner's Appendix A at 19a-20a). Not only is this conclusion reasonable, it is also one

that lies within the discretion of the Court. *Textile Workers Union v. Lincoln Mills, supra.* Such discretion is reviewed only for an abuse thereof, which the record does not indicate in this case.[2] *Lemon v. Kurtzman,* 411 U.S. 192, 200 (1973).

[2]The Chamber of Commerce and the National Association of Manufacturers, as *amici curiae* in support of the Petitioner, argue that the remedy adopted by the Fourth Circuit conflicts with this Court's decision in *H.K. Porter Co. v NLRB,* 397 U.S. 99 (1970). *Amici* misunderstand the nature of the Fourth Circuit's decision. In *H.K. Porter,* this Court held that the National Labor Relations Board could not remedy an employer's unlawful refusal to bargain by ordering the employer to agree to a particular contract provision. To do so would violate the fundamental principle of the national labor laws that the Board's function is to regulate the process of collective bargaining, not its result. The Fourth Circuit's decision is not in conflict. Rather, the decision is based on the equally fundamental principle of the national labor laws, embodied in Section 301 of the Taft-Hartley Act, that the court may fashion a remedy for the reasonably foreseeable damages flowing from the breach of a collective bargaining agreement voluntarily assumed. *Textile Workers Union v. Lincoln Mills, supra.* The Circuit fashioned a remedy here that extends beyond the term of the collective bargaining agreement based on its appraisal of the consequences of Allied's breach. In reality, *amici* seek nothing more than to have the Court reappraise the consequences of the breach and reach a different result. Such a task does not merit the Court's attention.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM F. HANRAHAN
General Counsel
GERALD E COLE, JR.
Deputy General Counsel
MARY ANNE GIBBONS
Assistant General Counsel

UMWA Health & Retirement Funds
Office of General Counsel
2021 K Street, N.W.
Washington, D.C. 20006
(202) 452-5034

Counsel for Respondent